

# DIR-TSO-4337

## Appendix D

### Master Service Agreement

This Master Service Agreement ("AGREEMENT") is between Forerunner Technologies, Inc., a Delaware Corporation, with its principal place of business at 150M Executive Drive, Edgewood, NY 11717 ("FORERUNNER") and \_<<Enter Customer Name Here >> ("CUSTOMER"), having its principal place of business at <<Enter Customer Location Here>> "LOCATION" which FORERUNNER agrees to provide Parts Coverage, Software Assurance, Remote Monitoring, Remote Support, Dispatched Support Services, and/or Dedicated On-Site Support Services (collectively herein after referred to as "SERVICES") as determined by the selection of available Maintenance Support Services in Attachment 1 - Maintenance Support Services.

This AGREEMENT contains the following attachments and attachment and exhibits: Attachment 1, "Maintenance Support Services"; Exhibit 1, Covered Components List and Pricing; Exhibit 2, Acceptable Use Policy (AUP).

#### 1. Definitions

- 1.1. Principal Period of Maintenance ("PPM") - The days and hours of the days when the SERVICES are available for delivery to the CUSTOMER.
- 1.2. Response Time - Response Time is measured according to the PPM. If PPM is less than 24 hours per day, 7 days a week, then Response Time is measured within that PPM. Response Time begins upon FORERUNNER receipt of maintenance service request from CUSTOMER, verification of problem found, and dispatch or initiation of remote labor required to affect repairs.
- 1.3. Service Level Agreement ("SLA") - The Response Time in which FORERUNNER will make commercially reasonable efforts to respond to CUSTOMER's reported maintenance incident.
- 1.4. Major System Failure - A general inability of the PBX system to receive incoming or originate outgoing calls, or a majority of either the central office trunks or tie trunks are inoperable, or more than fifty percent (50%) of either the stations or terminals are inoperable.
- 1.5. Time and Materials (T&M) Rates – To the extent allowable by DIR Contract DIR-TSO-4337, T&M is the prevailing local dispatch labor rate, plus list price of materials required to affect repairs. Onsite T&M hours require a one (1) hour minimum charge during normal business hours or a four (4) hour minimum charge after normal business hours per request, plus travel charges.
- 1.6. Covered Components - Covered components are the hardware and/or software identified in Exhibit 1 under Covered Systems.
- 1.7. Incident Management - The process of managing the lifecycle of unplanned interruption to service or service alarms detected through the process of remote monitoring of COVERED COMPONENTS.
- 1.8. Incident Prioritization - Service requests and service alarms will be prioritized in order to determine severity and response time. These incidents will be categorized in one of the three priorities below, based on the impact to the customer's business
  - 1.8.1. High: System is down or there is a critical impact to the CUSTOMER 's business operations or operation of system is severely degraded, or significant aspects of the CUSTOMER's business operation are being negatively impacted by unacceptable System performance.
  - 1.8.2. Medium: Operational performance of the System is impaired while most business operations remain functional.
  - 1.8.3. Low: CUSTOMER requires information or assistance regarding FORERUNNER Product capabilities, or configuration capabilities. There is clearly little or no impact to the CUSTOMER's business operation. MAC - (Moves Adds Changes) Changes that are requested by the CUSTOMER to modify the functionality of the Covered Component.
- 1.9. SNMP - Simple Network Management Protocol (SNMP) is an "Internet-standard protocol for managing devices on IP networks". Devices that typically support SNMP include PBX's, routers, switches, servers, workstations, printers, modem racks, and more. It is used mostly in network management systems to monitor network-attached devices for conditions that warrant administrative attention.

## 2. Performance of Services

- 2.1. FORERUNNER shall provide the SERVICES selected in Attachment 1, "Maintenance Support Services", in this AGREEMENT for the applicable hardware and software components ("COVERED COMPONENTS") defined in the Covered Components List (Exhibit 1). Upon Customer's written approval, FORERUNNER may change the SERVICES from time to time, and CUSTOMER will be notified of any material changes or updates to the SERVICES which may affect CUSTOMER. FORERUNNER may use a subcontractor as listed on DIR-TSO-4337, Appendix B HUB Subcontracting Plan, to provide the SERVICES.

## 3. Term and Termination

- 3.1. The "Initial Term" of this AGREEMENT shall commence on <<Enter Effective Date>> and shall end on <<Enter End Date>>, in accordance with the contract term stated in DIR Contract DIR-TSO-4337.
- 3.2. Upon mutual agreement of both parties, the term shall be extended for an additional one (1) year period(s) ("Extension(s)"), under the same terms and conditions of DIR Contract DIR-TSO-4337,
- 3.3. Termination shall be handled in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 11.B.

## 4. Service Fees

CUSTOMER agrees to pay a fee of <<Enter Price Here>> for the initial term of this Agreement in accordance with Appendix C, Pricing Index of DIR Contract DIR-TSO-4337. -FORERUNNER will invoice CUSTOMER for the SERVICE fees on a recurring basis in advance according the schedule selected below. Unless otherwise expressly agreed to by FORERUNNER in writing, payments are due within thirty (30) days from the date of invoice in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 8.J.

### Must Check One

Billing Interval: ☐ Monthly ☐ Quarterly ☐ Semi-Annual ☐ Annual (☐ Invoice)

In accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 8.E, the fees under this Attachment do not include federal, state, or local taxes.

## 5. Payment in Event of Early Termination of this Attachment

- 5.1. In the event CUSTOMER or FORERUNNER terminates this AGREEMENT before the expiration of the Initial Term - as set forth in Section 3 above, payment shall be in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 11.B.

## 6. Restrictions on use of Services

- 6.1. CUSTOMER agrees not to (i) rent, lease, or loan the SERVICES or any part thereof, or provide or use the SERVICES on a third party's behalf; (ii) permit third parties to benefit from the use of the SERVICES; (iii) reverse engineer, decompile, or disassemble any software that provides the SERVICES, or otherwise attempt to derive the source code of such software; or (iv) download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, without all required United States and foreign government licenses.

## 7. Customer Cooperation

- 7.1. CUSTOMER agrees to provide all information, access and full good faith cooperation reasonably necessary for FORERUNNER to deliver and provide the SERVICES and agrees that FORERUNNER delivery of the SERVICES depends upon CUSTOMER's timely cooperation and assistance as FORERUNNER may require. FORERUNNER shall bear no liability or otherwise be responsible for delays or failure in the provision of the SERVICES caused by CUSTOMER's failure to provide such reasonable information, cooperation, assistance or access.

## 8. Liabilities

- 8.1. FORERUNNER EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO CUSTOMER FOR THE SERVICES PROVIDED BY THIS AGREEMENT. WITHOUT LIMITATION TO AND NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN IS INTENDED TO DIMINISH OR LIMIT ANY THIRD PARTY WARRANTIES WHICH WILL PASS THROUGH FORERUNNER TECHNOLOGIES, INC. AND INURE TO THE BENEFIT OF CUSTOMER.
- 8.2. FORERUNNER WILL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR LOSS, DAMAGE OR EXPENSE DIRECTLY OR INDIRECTLY

ARISING FROM CUSTOMER'S USE OF (OR INABILITY TO USE) OR A THIRD PARTY'S UNAUTHORIZED USE OF THE SYSTEM OR ITS COMPONENTS, EITHER SEPARATELY OR IN COMBINATION WITH OTHER EQUIPMENT, OR FOR COMMERCIAL LOSS OF ANY KIND, REGARDLESS OF WHETHER FORERUNNER TECHNOLOGIES, INC. OR ITS SUBCONTRACTORS HAD BEEN ADVISED OF SUCH POSSIBILITY.

- 8.3. IN ADDITION TO THE LIMITATIONS SPECIFIED BY THE AGREEMENT, IN ALL SITUATIONS shall be handled in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 10.K.

## **9. Licensed Technology**

- 9.1. CUSTOMER agrees to provide FORERUNNER and its subcontractor with reasonable access to any information, materials, and technology owned, licensed, or controlled by CUSTOMER that FORERUNNER or its subcontractor reasonably requires for the purpose of enabling FORERUNNER or its subcontractor to perform the SERVICES (the "Licensed Technology").

## **10. Customer Responsibilities**

- 10.1. CUSTOMER is responsible for the physical security of the COVERED COMPONENTS.
- 10.2. CUSTOMER is responsible for ensuring proper environmental conditions for COVERED COMPONENTS as required by the manufacturer.
- 10.3. If CUSTOMER needs to send equipment to FORERUNNER, CUSTOMER agrees to ship such equipment via the freight and the rate as agreed by both parties.
- 10.4. CUSTOMER agrees to provide SSL, VPN and/or IP connectivity between FORERUNNER and CUSTOMER site and COVERED COMPONENTS for SERVICES.
- 10.5. CUSTOMER is responsible for provisioning, maintaining and any cost related to the private connections required for service delivery (For example: Private T1, MPLS, and Frame Relay).
- 10.6. CUSTOMER is responsible for allowing reasonable access to all COVERED COMPONENTS as required by FORERUNNER and its subcontractor. Any access-control servers required to provision access will be provided by CUSTOMER.
- 10.7. CUSTOMER is responsible for the management, support and maintenance of any non-covered component.
- 10.8. CUSTOMER is responsible for providing and maintaining an escalation path among CUSTOMER personnel.
- 10.9. CUSTOMER is responsible for end-user training unless otherwise agreed to in writing.
- 10.10. CUSTOMER shall provide or make available to FORERUNNER in advance and in writing, any CUSTOMER processes or policies with which FORERUNNER and its subcontractor are expected to comply in connection with this ATTACHMENT.

## **11. Travel & Expense Guidelines**

- 11.1. Travel expenses shall be handled in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 5.F.

## **12. NOTICES**

- 12.1. All notices required under this Attachment shall be in writing and sent to each party at the address indicated below by certified U.S. mail or other delivery service providing the sender a signature upon receipt. Such notice shall be effective upon receipt

<b>Customer:</b>	<b>FORERUNNER TECHNOLOGIES, INC.</b>
	150M Executive Drive
	Edgewood, NY 11717
	Facsimile: 631-567-2098
	Business: 631-337-2100
	Attention: Contracts Department

## **13. Force Majeure**

Force majeure shall be handled in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 11C.

## **14. Assignment**

Assignment shall be handled in accordance with Appendix A of DIR Contract DIR-TSO-4337, Section 4.D.

## **15. Governing Law**

This Agreement shall be governed by and construed in accordance with Appendix A of DIR Contract DIR-TSO-4337,

Section 4.F.

**16. Non-Waiver**

The waiver by either party of any default or any obligation will not operate as a waiver of any subsequent default or excuse any future obligation.

**17. Entire Agreement**

DIR Contract DIR-TSO-4337, this Agreement, when executed by FORERUNNER and Customer, constitutes the entire agreement between FORERUNNER and Customer with regard to Customer's Service by FORERUNNER. Any alterations or modifications to this Agreement must be in writing, and must be executed by both FORERUNNER and the Customer. ANY ALTERATIONS OR MODIFICATIONS TO THIS AGREEMENT, UNLESS MADE IN ACCORDANCE WITH THE ABOVE, SHALL BE VOID AND OF NO EFFECT. IN THE EVENT OF A CONFLICT IN TERMS, THE TERMS OF THE DIR CONTRACT SHALL PREVAIL.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this AGREEMENT to be duly executed.

\_\_\_\_\_  
Forerunner Technologies, Inc. Representative (Print Name)

\_\_\_\_\_  
Customer Representative (Print Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT 1:**  
**Maintenance Support Services**

**1. Maintenance Support Service Options**

1.1. FORERUNNER shall provide the following Maintenance Support Services as indicated by the selected check-box next to the services descriptions below. The SERVICES purchased by CUSTOMER are listed in Exhibit 1.

1.2. Services Descriptions:

☐ **Parts Coverage:**

Parts Replacement provides extended parts coverage for faulty or defective parts. If any covered part listed in Exhibit 1 - Covered Components List and Pricing is found to be defective under normal usage, CUSTOMER will be entitled to a full replacement of the covered part. FORERUNNER shall, during the contract period, furnish all parts necessary to maintain the System in good working order. Any replacement parts must be new. Parts will be furnished on an exchange basis, and any parts removed shall become the property of FORERUNNER.

This Service does not provide coverage for labor unless Onsite Support Services is also purchased. Any labor service provided by FORERUNNER shall be invoiced at FORERUNNER pricing as set forth in Appendix C, Pricing Index of DIR Contract DIR-TSO-4337, and onsite T&M hours require a one (1) hour minimum charge during normal business hours or a four (4) hour minimum charge after normal business hours per request.

After hours service calls are billed at one and one-half times the T&M rate, and services calls on Forerunner Technologies, Inc. -observed holidays are billed at twice the T&M rate.

Parts Replacement includes FORERUNNER Advance Replacement Program: FORERUNNER will offer CUSTOMER parts replacement, subject to geographic availability. Destination country importation, Customer compliance with U.S. export controls and customs processes may condition delivery times. Forerunner Technologies, Inc. will use commercially reasonable efforts to provide Advance Replacement service for COVERED COMPONENT as follows:

1. An Advance Replacement will ship the same day to arrive the next business day, provided both the CUSTOMER call to FORERUNNER for notification and FORERUNNER diagnosis and determination of the failed COVERED COMPONENT has been made before 3:00 p.m., local time, Monday through Friday (excluding FORERUNNER-observed holidays). For requests after 3:00 p.m., local time, the Advance Replacement will ship the next business day. Next day delivery is subject to parts availability.
2. Advance Replacements will be shipped using FORERUNNER preferred carrier, freight prepaid by FORERUNNER excluding import duties, taxes and fees, where applicable.
3. CUSTOMER has thirty (30) days to return the failed COVERED COMPONENT to FORERUNNER. If CUSTOMER fails to return the failed COVERED COMPONENT to FORERUNNER within thirty (30) days, CUSTOMER will be billed for the replacement cost of the COVERED COMPONENT.

☐ **Software Assurance:** *(Must be purchased if Parts Coverage & Support Services is selected)*

Software Assurance is manufactures software subscription and support program that provides access to future software versions and scheduled upgrades. Both software upgrades and limited support is included.

With Software Assurance, CUSTOMER is entitled to bug fixes, service packs, and new major and minor version upgrades for COVERED COMPONENTS at no additional cost. CUSTOMER will be provided with access to FORERUNNER technical experts through FORERUNNER Technical Support Center who can help ensure CUSTOMERS current software for COVERED COMPONENTS includes all the latest features and bug fixes. CUSTOMER will also be granted access to the Software Assurance collaboration site and technical knowledgebase.

FORERUNNER will make all software upgrades available, including any necessary licensing, from the manufacturers licensing server. However, FORERUNNER will be responsible for downloading and applying downloads for CUSTOMER when new software becomes available.

CUSTOMER is responsible for coordinating software upgrades from FORERUNNER as new software becomes available and is also responsible for any costs associated with installing patches, service packs, and/or new major and minor version upgrades. Software Assurance does not provide coverage for any labor or materials.

This Service does not provide coverage for any additional labor unless Dispatched Onsite Support Services or Dedicated On-Site Support Services is purchased.

☐ **Remote Monitoring:**

Remote Monitoring provides remote monitoring of FORERUNNER voice network components. FORERUNNER fully automated monitoring system will immediately e-mail CUSTOMER of critical component alarms in order to help identify and isolate failures.

FORERUNNER will provide CUSTOMER with 24x7 remote monitoring of SNMP enables voice components and critical voice network functions in order to identify component and voice related network issues.

Remote Monitoring provides CUSTOMER notification of detected component alarms.

This service does not provide Incident Management of the detected component alarms. CUSTOMER is responsible for further troubleshooting detected component alarms unless This Service does not provide coverage for any additional labor unless Dispatched Onsite Support Services or Dedicated On-Site Support Services is purchased.

All hardware provided for the purpose of Remote Monitoring or Incident Management is the property of FORERUNNER and shall be returned to FORERUNNER at the customer's expense, upon termination or cancellation of the Agreement.

☐ **Remote Support:**

Remote Support provides CUSTOMER with access to Forerunner Technologies' Technical Support Center and entitles CUSTOMER to technical phone support on hardware failures, configuration problems as well as connectivity and upgrade issues. In accordance with the provisions of this ATTACHMENT, FORERUNNER shall provide the CUSTOMER with following:

1. Assist CUSTOMER by telephone or e-mail.
2. Provide access to FORERUNNER Technical Support Center.
3. Provide customer with simple MAC requests that can be performed remotely within 45 minutes per incident. .

☐ **Dispatched Support Services**

Labor Support Services provides labor coverage to dispatch a technician to CUSTOMER site for onsite repairs or to resolve service problems. Onsite Repair also includes onsite preventative maintenance tasks and periodic testing of CUSTOMER communications system in order to ensure system reliability and stability.

FORERUNNER shall dispatch certified service personnel to CUSTOMER premises to perform necessary repairs, unless FORERUNNER is able to perform repairs from a remote location. FORERUNNER shall conduct remote diagnostic testing when applicable. Any service specifically requested by CUSTOMER outside Standard PPM is billable at the then prevailing After-hours or Holiday time and materials rates, respectively, according to holidays observed by FORERUNNER. Onsite T&M hours require a one (1) hour minimum charge during normal business hours or a four (4) hour minimum charge after normal business hours per request, plus travel charges. After hours service calls are billed at one and one-half times the T&M rate, and services calls on FORERUNNER -observed holidays are billed at twice the T&M rate.

PPM is 9x5 (Monday through Friday, excluding FORERUNNER -observed holidays, from 8 AM to 5 PM CUSTOMER local time zone unless otherwise authorized by FORERUNNER management). Services include a maximum of forty (40) hours per week of onsite labor provided by an assigned service technician. The assigned service technician is to be allowed up to ten (10) sick days per annum without backfill, credit, or refund of any payments made. Repair services must be prioritized as primary responsibility. Any hours expended above and beyond forty (40) hours per week will be billed at prevailing hourly T&M rates. Hours not expended upon the expiration of this Attachment will not be carried over or credited.

***Onsite Repair does not provide parts coverage for faulty or defective parts unless Certified Parts Replacement is also purchased.***

☐ **Dedicated On-Site Support Services**

On-Site Support Services provides a dedicated FORERUNNER service technician(s) placed on CUSTOMER'S premise to manage and maintain CUSTOMER'S PBX platform and peripherals. FORERUNNER shall, during the contract period, furnish all labor necessary to maintain the COVERED COMPONENTS in good working order, or provide such other coverage as specified in this ATTACHMENT.

PPM is 9x5 (Monday through Friday, excluding FORERUNNER -observed holidays, from 8 AM to 5 PM CUSTOMER local time zone unless otherwise authorized by FORERUNNER management). Services include a maximum of forty (40) hours per week of onsite labor provided by an assigned service technician. The assigned service technician is to be allowed up to ten (10) sick days per annum without backfill, credit, or refund of any payments made. Repair services must be prioritized as primary responsibility. Any hours expended above and beyond forty (40) hours per week will be billed at prevailing hourly T&M rates. Hours not expended upon the expiration of this Attachment will not be carried over or credited.

The requested Service Level option is selected below:

**Selected Service Level Option**

- ☐ Emergency after-hours services included.  
☐ After hours on call dedicated technician services included.

***Dedicated On-Site Support Services does not provide parts coverage for faulty or defective parts unless Parts Only Coverage is also purchased.***

**2. Non-Covered Services**

- 2.1. FORERUNNER will attempt to respond promptly to all requests for service. If service is required outside FORERUNNER normal service hours, labor for such non-covered service calls will be chargeable to CUSTOMER in accordance with FORERUNNER local prevailing hourly labor rates and onsite hours require a one (1) hour

minimum charge during normal business hours or a four (4) hour minimum charge after normal business per request, plus travel charges. Any service specifically requested by CUSTOMER outside standard PPM is billable at the then prevailing After-hours or Holiday time and materials rates, respectively, according to holidays observed by FORERUNNER and on-site hours require a four (4)-hour minimum per request, plus travel charges. After hours service calls are billed at one and one-half times the T&M rate, and services calls on FORERUNNER -observed holidays are billed at twice the T&M rate.

**3. Rework**

- 3.1. For any rework or additional work that FORERUNNER is required to perform because of inaccurate information provided by CUSTOMER and/or CUSTOMER's failure to perform its responsibilities under this ATTACHMENT, Forerunner Technologies, Inc. will invoice CUSTOMER on a time and materials basis and CUSTOMER agrees to pay such invoice.

**Acceptance acknowledged by duly authorized representative as of the date set forth below:**

\_\_\_\_\_  
Forerunner Technologies, Inc. Representative (Print Name)

\_\_\_\_\_  
Customer Representative (Print Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## EXHIBIT 1

## Covered Components List and Pricing

[illegible]

## EXHIBIT 2

### Acceptable Use Policy (AUP)

The Acceptable Use Policy for the SERVICES (the "Policy" or "AUP") is designed to protect FORERUNNER and its subcontractors, their customers, and the Internet community in general from irresponsible or, in some cases, illegal activities. The Policy is a non-exclusive list of the actions prohibited by FORERUNNER. FORERUNNER reserves the right to modify the Policy at any time.

Prohibited uses include:

- Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited.  
This includes, without limitation, material protected by copyright, trademark, and trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
- Sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material ("e-mail spam"). This includes, but is not limited to, bulk-mailing of commercial advertising, informational announcements, and political tracts. Forerunner Technologies, Inc. services may not be used to solicit Subscribers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.
- Unauthorized use, or forging, of mail header information (e.g. "spoofing").
- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
- Obtaining or attempting to obtain service by any means or component with intent to avoid payment.
- Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any Forerunner Technologies, Inc. Subscribers or end-users by any means or component.
- Knowingly engage in any activities that will cause a denial-of-service (e.g., mail bombs) to any Forerunner Technologies, Inc. Subscribers or end-users whether on the network or on another provider's network.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the Acceptable Use Policy of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send e-mail spam, initiation of ping, flooding, mail-bombing, denial of service attacks, and piracy of software.
- Using FORERUNNER or its subcontractor's services to interfere with the use of the network by other Subscribers or authorized users.

Subscriber is responsible for the activities of its Subscriber base/representatives or end-users and, by accepting SERVICES from FORERUNNER or its subcontractors, is agreeing to ensure that its representatives or end-users abide by this Policy. Complaints about Subscribers/representatives or end-users of Subscriber will be forwarded to the FORERUNNER Subscriber's postmaster for action. If violations of the AUP occur, FORERUNNER reserves the right to terminate SERVICES with or take action to stop the offending Subscriber from violating the AUP as FORERUNNER deems appropriate, without notice. The then-current version of this AUP may be obtained, upon request, from FORERUNNER.